



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

**JUL 25 2013**

Alicia E. Kirchner  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814-2922

Subject: Sutter Basin Pilot Feasibility Report Supplemental Draft Environmental Impact Statement (SDEIS), Butte and Sutter Counties, California [CEQ #20130170]

Dear Ms. Kirchner:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced document. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) NEPA Implementation Regulations at 40 CFR 1500 - 1508, and our review authority under Section 309 of the Clean Air Act.

The reach and environmental impacts of the project analyzed in the Sutter Basin Pilot Feasibility Report SDEIS are similar to those of the Feather River West Levee Project (FRWLP); however, this SDEIS supplements the FRWLP Final EIS to address additional levee improvements.

The SDEIS (p. 6-4) acknowledges that the Tentatively Selected Plan (TSP) must be evaluated pursuant to Section 404(b)(1) of the Clean Water Act in accordance with the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230). The SDEIS also acknowledges that the project must be the least environmentally damaging practicable alternative (LEDPA) and would include all appropriate and practicable measures necessary to minimize adverse effects on the aquatic environment. The SDEIS does not, however, demonstrate that the TSP is the LEDPA. It states that the 404(b)(1) alternatives analysis will be included in the Final EIS.

The practice of deferring, until the conclusion of the NEPA process, the disclosure of information needed for findings of compliance with the Guidelines makes it difficult for agencies and the public to provide timely and substantive input on the evaluation of alternatives, which could inform the Corps' decision making process. Integrating the section 404(b)(1) alternatives analysis into the Draft EIS alternatives analysis would afford agencies and the public a more meaningful opportunity to evaluate impacts and provide relevant and timely feedback to inform these analyses and the Corps' decision.

We have rated this SDEIS as EC-2 – Environmental Concerns-Insufficient Information (see Enclosure 1: "Summary of Rating Definitions and Follow-Up Action") because it is unclear whether the TSP is LEDPA, and we are unable to assess the likelihood that affected waters

would be successfully restored. We recommend that, in the future, the 404(b)(1) alternatives analysis be included in Draft EISs.

The Sutter Basin Pilot Feasibility Report Mitigation and Monitoring Plan (MMP) does not identify restoration measures, success criteria, or monitoring commitments for 3.099 acres of waters of the U.S. that would be temporarily affected by the project. We note that such information is provided in the MMP for restoration and/or creation of riparian, non-riparian, and Valley elderberry longhorn beetle habitat. We recommend that the Final EIS and MMP include commitments to actively restore temporarily affected waters of the U.S. The FEIS and MMP should identify restoration measures and success criteria, and include monitoring commitments to ensure successful restoration of these resources.

According to the MMP (p. 4-1), success criteria for riparian vegetation, oak woodland, and Valley elderberry include demonstrating at least 60 percent survival of all plantings after 20 years. Elsewhere (p. 3-9), the MMP states, "It is anticipated that at the end of the 3-year establishment period, 70% survivorship of woody species will be attained." According to the Corps Regulatory Program Uniform Performance Standards for Compensatory Mitigation Requirements (Version 8/9/2012, SPD QMS 12505.1), permittees are required to ensure equal or greater than 80 percent survivorship for vegetation and monitor annually until a minimum of 2 years of success post-irrigation. We recommend that the project be required to meet this performance standard.

The MMP (p. 5-2) recommends herbicide application in areas that will be planted, and identifies the herbicides that are most likely to be used. EPA recommends that the MMP state the conditions under which pesticides would be used, including actions needed to comply with California's general National Pollutant Discharge Elimination System permits for pesticide applications. Note that the California permits may require advance submission of a pesticide application plan, in some cases 90 days in advance. More information is available at [http://www.swrcb.ca.gov/water\\_issues/programs/npdes/aquatic.shtml](http://www.swrcb.ca.gov/water_issues/programs/npdes/aquatic.shtml). You may also wish to contact Phil Isorena ([Philip.Isorena@waterboards.ca.gov](mailto:Philip.Isorena@waterboards.ca.gov)) at the California State Water Resources Control Board.

We appreciate the opportunity to review this SDEIS. Please send a copy of the Final EIS to this office (mailcode CED-2) when it is filed with EPA's electronic submittal tool, *e-NEPA*. If you have any questions, please call me at (415) 972-3521 or contact Jeanne Geselbracht, our lead NEPA reviewer for this project, at [geselbracht.jeanne@epa.gov](mailto:geselbracht.jeanne@epa.gov) or (415) 972-3853.

Sincerely,



Kathleen Martyn Goforth, Manager  
Environmental Review Office

Enclosure: Summary of Rating Definitions and Follow-Up Action  
cc: Mike Inamine, Sutter Butte Flood Control Agency